June 1, 2006

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd floor
Boston, MA 02110

Re: **Bay State Gas Company, D.T.E. 06-7**

Dear Ms. Cottrell:

On January 27, 2006, Bay State Gas Company ("Bay State" or "Company") filed a Petition with the Department of Telecommunications and Energy ("Department") for approval of a Long-Term Gas Supply and Capacity Agreement ("Proposed Agreement") with Northeast Energy Associates, a Limited Partnership ("NEA"). Pursuant to the procedural schedule, the Company submitted its Initial Brief on May, 9, 2006 and its Reply Brief on May 23, 2006, and the Attorney General submitted his Initial Brief on May 16, 2006 and submits this letter as his Reply Brief.[1]

I. Argument

A. The Proposed Agreement Is Inconsistent With The Portfolio Objectives Of The Company Because It Puts Customers At Risk Of Paying High Prices For Natural Gas Service

In its Initial Brief the Company state that the Proposed Agreement contributes "[t]o Bay State's goal of developing a best-cost portfolio," *Bay State Gas Company's Initial Brief*, ("CO. IN. BR.") at 4. The agreement, however, fails to meet the goal because the assignment of additional firm transportation capacity to Bay State would increase the cost of the Proposed

[1] This Reply Brief is not intended to respond to every argument the Company has made or position it has taken. Rather, it is intended to respond only to the extent necessary to assist the Department in its deliberations, *i.e.*, to provide further information, to correct misstatements or misinterpretations, or to provide omitted context. Therefore, silence by the Attorney General in regard to any particular argument in another party's brief should not be interpreted as assent.

Agreement and jeopardize reliability of service. Customers would have to pay an additional $2.9 million for the firm transportation capacity. Exhibit ("Exh.") AG-1-10. The Company failed to offer any evidence to demonstrate that it could release the capacity during the off-peak periods to generate revenues to offset this incremental cost to customers. Tr. at 18, lines 1-6, Exh. AG-1-10.

The Company's SENDOUT analysis seemingly assumed that Bay State could purchase a replacement peaking gas supply for the Proposed Agreement at the same price under the Proposed Agreement, Exh. FCD-10, Confidential; Confidential Exh. FCD-11, Confidential, but the Company provided no evidence that it could purchase gas at the same price. The Company would only have 60 days to find a peaking gas supply replacement for the Proposed Agreement.[2] Exh. AG-1-10; Exh. FCD-1,Confidential, at 9.[3] The Company failed to provide evidence that it could find a cost effective replacement for the peaking gas supply in 60 days. *Cf.* Tr. at 20, lines 16-20. This 60-day provision leaves Bay State at risk for purchasing the replacement gas on the spot market where it would likely pay higher prices for gas because of the nature of the spot market.[3]

The record also fails to show that the Proposed Agreement would provide reliable service, further undermining best-cost service.[4] Although the Company states the Proposed Agreement will promote reliability, and therefore a best-cost portfolio, CO. IN. BR., at 5, if Bay State cannot find a replacement source for the peaking gas supply then the Company's service reliability would be compromised.

B. The Plain Language Of The Statute Requires A Company To File A Long-Range Forecast Every Two Years From the Initial Date of Filing, Not Two Years After Department Approval Of The Plan

In its Reply Brief, the Company misinterpreted the unambiguous two-year filing requirement for a long-range forecast imposed on it by M.G.L. c. 164, § 69I. *Bay State Gas Company's Reply Brief,* ("CO. R. BR."), at 2. M.G.L. c. 164, § 69I, provides that:

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[2]Although the 60 day notice requirement is derived from a confidential exhibit, the Attorney General deemed that the Company waived its right to confidential treatment of this information when it included the information in its response AG-1-10, a public exhibit.

[3] This provision leaves Bay State at risk that it could be without gas in the middle of the winter season. If Bay State received notice November 1, for example, it would have 60 days to find a replacement peaking gas supply by December 31, right in the middle of its peak heating season. This replacement peaking gas supply will almost certainly be extremely expensive.

[4] The Company's supply resources are concentrated the in the Western Canada/Midwest region. More than 70% of the Company's supply contracts are from Canadian/Midwest resources with over 60% coming from sources in Western Canada/Midwest. Exh. DTE-1-10, Attachment. The Proposed Agreement fails to contribute to the Company's resource portfolio's diversity.

> Every gas company . . . shall file with the department a long-range forecast with respect to the gas requirements of its market area . . . Such forecasts shall be filed at least every two years.

In its Reply Brief, the Company suggested that the statute requires it to file a long-range forecast four years after the Company filed its 2002 Long-range Forecast, *i.e.* two years after Department issued its order on reconsideration. *Id.* at 2. The mandatory language of the statute unambiguously states, however, that the Company must file every other calendar year. The statute plainly states that "[f]orecasts shall be filed at least every two years." The word "shall" seems to indicate that the filing requirement is not optional, but an absolute requirement.[5] The statute contains no exceptions for pending motions or appeals of Department orders. M.G.L. 164 § 69I.[6] The phrase "at least every two years" indicates that the Company, and all other gas companies, must file a long-range forecast every second calendar year after filing of its forecast, or sooner, but not later.

The Department's one-year approval requirement supports this interpretation. M.G.L. 164 § 69I, provides that the Department "[s]hall within twelve months from the date of filing approve a long-range forecast . . ." The statute plainly indicates that the approval and the submission of the forecasts should alternate; a gas company should submit a forecast one calendar year, then the Department should approve it the next calendar year, and this cycle should continue.

C. The Record Fails to Demonstrate that the Proposed Agreement Compares Favorably to the Range of Available Alternatives

In its Initial Brief, the Company claimed that the Proposed Agreement compares favorably to the range of available alternatives, but the record fails to support this claim. As explained in Part A of this brief, additional costs will cause the cost of the Proposed Agreement to rise if NEA assigns the upstream, firm transmission capacity. The comparative analysis of the Proposed Agreement to the available alternatives conducted by the Company via SENDOUT, CO. IN. BR., at 8-9, fails to factor in the additional costs. The record contains no evidence that the additional costs will not cause the Proposed Agreement to become more expensive than the available alternatives.[7]

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[5] "The word 'shall' as used in statutes, although in its common meaning mandatory, is not of inflexible signification and not infrequently is construed as permissive or directory in order to effectuate a legislative purpose." *Swift v. Registrars of Voters of Quincy*, 281 Mass. 271, 276 (1932) *citing Cheney v. Coughlin*, 201 Mass. 204, 87 N. E. 744; *Rea v. Board of Aldermen of Everett,* 217 Mass. 427, 430, 105 N. E. 618.

[6] The statute states that "[t]he department is authorized to exempt any electric or gas company from any or all provisions of this section upon a determination by the department and the siting board, after notice and hearing, that an alternative process is in the public interest." *Id.* It does not appear that the Department has done so in this case.

[7] CONFIDENTIAL: REDACTED

In conclusion, the Department should adopt the recommendations in the Initial and Reply Briefs submitted by the Attorney General.

Respectfully submitted,

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THOMAS F. REILLY,
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By Authorized Representative

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Dated: June 1, 2006

cc: Jesse Reyes, Hearing Officer
Service List